

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

REUBEN AVENT,

Plaintiff,

1:19-cv-1494 (BKS/DJS)

v.

PLATINUM PLUS AUTO PROTECTION, et al.,

Defendants.

Appearances:

Plaintiff, pro se:

Reuben Avent
New York, New York

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Reuben Avent commenced this action pro se in the Southern District of New York asserting claims under 42 U.S.C. §§ 1981 and 1983; the Fair Debt Collection Practices Act, 15 U.S.C. § 1692; and under state law for fraud in the inducement and breach of contract. (Dkt. No. 1). Southern District of New York Chief Judge Colleen McMahon granted Plaintiff's request to proceed in forma pauperis and transferred this case to the Northern District of New York. (Dkt. Nos. 3, 4). This matter was referred to United States Magistrate Daniel J. Stewart who, on February 14, 2020, issued a Report-Recommendation recommending that Plaintiff's fourth and fifth causes of action, asserting claims under the Fifth, Fourth, and Fourteenth Amendments of the United States Constitution be dismissed with leave to replead, and that the remainder of Plaintiff's claims be permitted to proceed. (Dkt. No. 8). Magistrate Judge Stewart advised Plaintiff that under 28 U.S.C. § 636(b)(1), he had fourteen days within which to file written

objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 8, at 8).

No objections to the Report-Recommendation have been filed. As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 8) is **ADOPTED** in its entirety; and it is further

ORDERED that the Fourth and Fifth Causes of Action in the Complaint, asserting claims under the Fifth, Fourth, and Fourteenth Amendments of the United States Constitution are **DISMISSED** with leave to replead; and it is further

ORDERED, that the remainder of Plaintiff’s claims are permitted to proceed; and it is further

ORDERED that Plaintiff is granted leave to file an Amended Complaint **within thirty (30) days** of the date of this Order. Any Amended Complaint must be a complete pleading which will replace the current Complaint in total; and it is further

ORDERED that if Plaintiff files an Amended Complaint within thirty (30) days of the date of this Order, the Amended Complaint shall be referred to Magistrate Judge Stewart for review; and it is further

ORDERED that if no Amended Complaint is filed within thirty (30) days of the date of this Order, the Clerk shall issue summonses and forward them with copies of the complaint and packets containing General Order 25, which sets forth this district's Civil Case Management Plan, to the United States Marshal for service upon the named defendants; and it is further

ORDERED that all pleadings, motions, and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with all requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with rule 7.1 of the Local Rules of Practice for the Northern District of New York in filing motions. Motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so may result in the dismissal of this action;** and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: April 6, 2020
Syracuse, New York


Brenda K. Sannes
Brenda K. Sannes
U.S. District Judge